

# **3d Supp. Kekacs Decl. Ex. 378**

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

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Care One Management, LLC, et al.,

Plaintiffs,

v.

1199 SEIU United Healthcare Workers East,  
and the New England Health Care  
Employees Union, District 1199,

Defendants.

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Civil Action No: 2:12-cv-06371

Honorable Susan D. Wigenton, U.S.D.J.  
Honorable Michael A. Hammer U.S.M.J.

**SECOND SUPPLEMENT TO INITIAL RULE 26(a) DISCLOSURES  
OF PLAINTIFFS CARE ONE MANAGEMENT, LLC, ET AL.**

Pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure, all of the Plaintiffs to the above-captioned case (hereinafter collectively referred to as “Plaintiffs”) supplement part (C) to their disclosures to defendants 1199 SEIU United Healthcare Workers East (“UHWE”), and New England Health Care Employees Union, District 1199 (“NEHCEU”) (collectively “Unions” or “Defendants”) as follows.

**PRELIMINARY STATEMENT**

Plaintiffs have not yet completed their investigation of the facts pertaining to this lawsuit, review of their own documents, discovery, or preparation for trial. Plaintiffs continue to reserve the right to rely on any facts, documents, or other evidence that may develop or come to their attention at a later time. Plaintiffs also reserve the right to further supplement or amend their Initial Disclosures.

- (C) **A computation of each category of damages claimed by the disclosing party – who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered:**

Pursuant to Federal Rules of Civil Procedure 26(a)(1)(C), Plaintiffs claim compensatory and consequential damages to Plaintiffs' business from Defendants' actions, treble the compensatory and consequential damages, costs of suit and exemplary and/or punitive damages under applicable state law. Plaintiffs reserve the right to delete, or add to, the categories of damages listed below. Because the Defendants' corporate campaign is on-going, it may be that additional items of damages are uncovered as discovery and this case progress, and Plaintiffs specifically reserve the right to supplement these disclosures to add additional items and categories of damages as appropriate. Plaintiffs note that the damages claimed will be subject to trebling pursuant to 18 U.S.C. 1964(c), with the exception of reasonable attorneys' fees and litigation costs, which will be determined after the verdict.

In addition to the general categories of damages specified in Plaintiffs' Amended Complaint and in their initial Rule 26 disclosure statement dated February 7, 2014, based on the facts known to Plaintiffs to date, Plaintiffs set forth specific items of damages claimed, and the manner in which they are computing these items of damages, as follows.

**1. Lost revenues**

**a. documented decreases in patient revenue**

As a result of Defendants' conduct in driving patients away from Plaintiffs' facilities and dissuading prospective patients from seeking treatment at Plaintiffs' facilities, the following of Plaintiff's facilities (listed by names and amounts of revenue lost) have seen substantial declines in their revenue from January 1, 2009, through December 31, 2013, measured by decreases in patient census and changes in patient and payer mix:

<b>Name of Plaintiff</b>	<b>Declines in revenues measured by changes in patient census and patient and payer mix -- 2009-2013 (except as noted) (in \$US)</b>
Care One at Birchwood, LLC, d/b/a Care One at The Highlands	2,594,599
Care One at East Brunswick, LLC, d/b/a Care One at East Brunswick	260,919
Care One at Parsippany-Troy Hills, LLC, d/b/a Care One at Morris SNF	490,127
Care One at Wall, LLC, d/b/a Care One at Wall	1,315,337
Care Two, LLC, d/b/a Care One at Livingston SNF	1,511,356
Elmwood Evesham Associates, LLC, d/b/a Care One at Evesham	3,772,524
HCC, LLC, d/b/a Care One at Holmdel	1,253,947
11 History Lane Operating Company, LLC, d/b/a Care One at Jackson	2,283,013
2 Cooper Plaza Operating Company, LLC, d/b/a South Jersey Health Care Center	2,246,232
1621 Route 22 West Operating Company, LLC, d/b/a Somerset Valley Rehabilitation and Nursing Center	3,835,023
341 Jordan Lane Operating Company II, LLC, d/b/a Wethersfield Health Care Center	17,808,308
107 Osborne Street Operating Company II, LLC, d/b/a Danbury Health Care Center	7,086,701
240 Church Street Operating Company II, LLC, d/b/a Newington Health Care Center	10,429,570
245 Orange Avenue Operating Company II, LLC, d/b/a West River Health Care Center	4,333,042

2028 Bridgeport Avenue Operating Company II, LLC, d/b/a Golden Hill Health Care Center	3,496,837
745 Highland Avenue Operating Company, LLC, d/b/a The Highlands Health Care Center	4,000,750
135 Benton Drive Operating Company, LLC, d/b/a Redstone Health Care Center	3,359,390
2101 Washington Street Operating Company, LLC, d/b/a Newton Healthcare Center	8,645,804
221 Fitzgerald Drive Operating Company, LLC, d/b/a New Bedford Health Care Center	6,259,260
49 Thomas Patten Drive Operating Company, LLC, d/b/a Cedar Hill Health Care Center	1,382,280
57 Old Road to Nine Acre Corner Operating Company, LLC, d/b/a Concord Health Care Center	1,624,821
64 Performance Drive Operating Company, LLC, d/b/a Weymouth Health Care Center	2,705,061
710 Long Ridge Road Operating Company II, LLC, d/b/a Stamford Health Care Center	428,689
548 Elm Street Operating Company, LLC, d/b/a Calvin Coolidge Nursing and Rehab. Center for Northhampton	1,428,191
Care One at Madison Avenue, LLC, d/b/a Care One at Madison Avenue	1,316,689
King James Care Center of Middletown, LLC, d/b/a Care One at King James	279,179
Care One at Mercer, LLC, d/b/a Care One at Ewing	263,596
1 Burr Road Operating Company II, LLC, d/b/a Westport Health Care Center	165,510
Park, Marion and Vernon Streets Operating Company, LLC, d/b/a Brookline Health Care Center	158,404

750 Woburn Street Operating Company, LLC, d/b/a Wilmington Health Care Center	74,182
800 River Road Operating Company, LLC, d/b/a Woodcrest Health Care Center	1,048,873 (from January 1, 2010 to December 31, 2013)
<b>TOTAL</b>	<b>\$95,429,523</b>

**b. other lost revenues**

In addition to the specific plaintiffs listed above that have seen a documented decline in patient revenue since 2009, upon information and belief, all of the named Plaintiffs in this lawsuit have lost patient revenues and patient revenue opportunities as a direct consequence of Defendants' relentless corporate campaign and other unlawful conduct directed to Plaintiffs. The precise dollar amounts of these additional lost revenues have yet to be quantified and their computation is expected to be based, at least in part, upon expert analysis and testimony.

**2. Lost acquisition opportunities**

**a. Merrimack Health Group, Inc.**

In or around 2012, a subsidiary of Care One, LLC bid on the acquisition of a group of eight facilities (seven skilled nursing facilities and one transitional care facility) in Massachusetts owned by Merrimack Health Group, Inc. ("Merrimack"). Even though Care One was the highest bidder, Merrimack refused to sell the facilities to Care One as the result of pressure placed on them by Defendants. As a result, the transaction was not consummated, causing Care One, LLC to sustain approximately \$60,000,000 in damages, as measured by the projected cash flow from 2013 through 2018, and projected terminal value of the assets at the end of 2018, less the purchase price, had the transaction been consummated.

**b. Kateri Residence**

In 2011, a subsidiary of Care One, LLC bid on the acquisition of the Kateri Residence, located at 150 Riverside Drive, New York, NY 10024, owned by facilities in New York City owned by the Catholic Health Care System. Even though, again, Care One was the highest bidder, Catholic Health Care System refused to sell the facility to Care One as the result of pressure placed on it by Defendants. As the result, the transaction was not consummated, causing Care One, LLC to sustain approximately \$200,000,000 in damages, as measured by projected revenues had the transaction been consummated.

**3. Business interruption damages**

**a. delayed Wethersfield closure**

Care Realty, LLC incurred operational costs of approximately \$6,000,000, plus attorneys' fees and costs, as the result of the delay in the approval by the State of Connecticut of the application of Plaintiff 341 Jordan Lane Operating Company, d/b/a Wethersfield Health Care Center, for a Certificate of Need to cease its operations and close, attributable to interference from Defendants.

**b. delayed Determinations of Need caused by Ten Taxpayer petitions**

The following of Plaintiff's facilities have lost revenues totaling at least \$19,770,000 in lost Medicaid reimbursements, plus professional fees and costs, as the result of delays in approvals by the State of Massachusetts of Determinations of Need, attributable to baseless Ten Taxpayer Group petitions in Massachusetts filed by or on behalf of defendant UHWE:

<b>Name of Plaintiff</b>	<b>Lost Medicaid Reimbursements (in \$US)</b>
2101 Washington Street Operating Company, LLC, d/b/a Newton Healthcare Center	4,785,000
265 Essex Street Operating Company, LLC, d/b/a Essex Park Rehabilitation Center <sup>1</sup>	800,000
178 Lowell Street Operating Company, LLC, d/b/a Lexington Health Care Center	285,000
548 Elm Street Operating Company, LLC, d/b/a Calvin Coolidge Nursing and Rehab. Center for Northhampton	430,000
135 Benton Drive Operating Company, LLC, d/b/a Redstone Health Care Center	1,660,000
199 Andover Street Operating Company, LLC, d/b/a Peabody Glen Health Care Center	1,425,000
Park, Marion and Vernon Streets Operating Company, LLC, d/b/a Brookline Health Care Center	760,000
57 Old Road to Nine Acre Corner 2A and 2B, LLC, d/b/a Concord Health Care Center	1,475,000
312 Millbury Avenue Operating Company, LLC, d/b/a Millbury Health Care Center	550,000
221 Fitzgerald Drive Operating Company, LLC, d/b/a New Bedford Health Care Center	1,385,000
64 Performance Drive Operating Company, LLC, d/b/a Weymouth Health Care Center	1,570,000
750 Woburn Street Operating Company, LLC, d/b/a Wilmington Health Care Center	925,000

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<sup>1</sup> To be added as a Plaintiff.



49 Thomas Patten Drive Operating Company, LLC, d/b/a Cedar Hill Health Care Center	1,120,000
19 Varnum Street Operating Company, LLC, d/b/a Lowell Health Care Center	TBD
260 Easthampton Road Operating Company, LLC, d/b/a Holyoke Rehabilitation Center	TBD
DES Senior Care Holdings LLC, d/b/a Sweet Brook Care Centers <sup>2</sup>	2,600,000
<b>Total</b>	<b>\$19,770,000</b>

**c. strike-related sabotage on July 2-3, 2012**

Plaintiffs 107 Osborne Street Operating Company II, LLC, d/b/a Danbury Health Care Center, 240 Church Street Operating Company II, LLC, d/b/a Newington Health Care Center, and 710 Long Ridge Road Operating Company II, LLC, d/b/a Stamford Health Care Center, sustained business interruption and property damages, plus attorneys' fees and costs, as the result of the numerous criminal acts of sabotage coordinated by defendant NEHCEU on July 2 and 3, 2012. The precise dollar amounts of these damages have yet to be quantified and their computation is expected to be based, at least in part, upon expert analysis and testimony.

**d. River Glen subpoena response**

Plaintiff 162 South Britain Road Operating Company II, LLC, d/b/a River Glen Health Care Center, incurred business interruption damages, plus attorneys' fees and costs, to respond to a subpoena directed to that Plaintiff by the U.S. Department of Health and Human Services, Office of Inspector General, on July 12, 2012, which was triggered by the memorandum entitled, "Questionable Medicare Billing Practices at Connecticut HealthBridge Homes," prepared by

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<sup>2</sup> To be added as a Plaintiff.

“SEIU Healthcare” and dated February 7, 2012 (copy annexed to the Amended Complaint as Exhibit L). The precise dollar amounts of business interruption damages have yet to be quantified and their computation is expected to be based, at least in part, upon expert analysis and testimony.

**e. trespassing by traveling billboard trucks on August 10, 2012**

Plaintiffs CareOne at Moorestown, LLC, d/b/a Care One at Moorestown, and Care One at Hamilton, LLC, d/b/a Care One at Hamilton, sustained business interruption damages as the result of the billboard trucks sponsored by Defendants trespassing on the property of these facilities on August 10, 2012, blocking access to the facilities, and forcing residents and visitors to park in fire lanes and/or away from the facility. The precise dollar amounts of these damages have yet to be quantified and their computation is expected to be based, at least in part, upon expert analysis and testimony.

**f. trespassing and vandalism at Plaintiffs’ headquarters on August 23, 2012**

Plaintiffs Care One, LLC, Care One Management, LLC, Care Realty, LLC, and HealthBidge Management, LLC, sustained business interruption and property damages as the result of the acts of trespass at Plaintiffs’ headquarters by and on behalf of Defendants and their members on August 23, 2012. The precise dollar amounts of these damages have yet to be quantified and their computation is expected to be based, at least in part, upon expert analysis and testimony.

**g. other business interruption damages**

In addition to the specific categories of business interruption damages described above, upon information and belief, all of the named Plaintiffs in this lawsuit have sustained business interruption damages, including lost costs in time, person-hours, other administrative expenses,

and legal and other professional expenses, as a direct consequence of Defendants' relentless corporate campaign and other unlawful conduct directed toward Plaintiffs. The precise dollar amounts of these additional business interruption damages have yet to be quantified and their computation is expected to be based, at least in part, upon expert analysis and testimony.

**4. Damages from mitigation activity**

**a. Public relations firm fees**

As a direct consequence of Defendants' relentless corporate campaign and other unlawful conduct directed toward Plaintiffs, many of the Plaintiffs have been forced to retain the services of a public relations firm, Prism Public Affairs, to respond to numerous false and misleading statements and negative publicity generated by Defendants:

<b>Name of Plaintiff</b>	<b>Public Relations Firm Fees-- 2012-present (in \$US)</b>
Care One Management, LLC	389,085
Care One at East Brunswick, LLC, d/b/a Care One at East Brunswick	2,298
Elmwood Evesham Associates, LLC, d/b/a Care One at Evesham (ALF)	2,298
Elmwood Evesham Associates, LLC, d/b/a Care One at Evesham (SNF)	2,298
Care One at Mercer, LLC, d/b/a Care One at Ewing	2,298
Care One at Hamilton, LLC, d/b/a Care One at Hamilton	2,298
HCC, LLC, d/b/a Care One at Holmdel	2,298
11 History Lane Operating Company, LLC, d/b/a Care One at Jackson	2,298
King James Care Center of Middletown, LLC, d/b/a Care One at King James	2,298

Care Two, LLC, d/b/a Care One at Livingston (ALF)	2,298
Care Two, LLC, d/b/a Care One at Livingston (SNF)	2,298
Care One at Madison Avenue, LLC, d/b/a Care One at Madison Avenue	2,298
CareOne at Moorestown, LLC, d/b/a Care One at Moorestown	2,298
Care One at Parsippany-Troy Hills, LLC, d/b/a Care One at Morris (ALF)	2,298
Care One at Parsippany-Troy Hills, LLC, d/b/a Care One at Morris (SNF)	2,298
Care One at Teaneck, LLC, d/b/a Care One at Teaneck	2,298
Millennium Healthcare Centers, LLC, d/b/a Care One at The Cupola	2,298
Care One at Birchwood, LLC, d/b/a Care One at The Highlands	2,298
Millennium Healthcare Centers II, LLC, d/b/a Care One at Valley	2,298
Care One at Wall, LLC, d/b/a Care One at Wall	2,298
493 Black Oak Ridge Road, LLC, d/b/a Care One at Wayne	2,298
301 Union Street, LLC, d/b/a Care One at Wellington	2,298
CareOne at Moorestown, LLC, d/b/a Care One at Moorestown	2,298
107 Osborne Street Operating Company II, LLC, d/b/a Danbury Health Care Center	62,049
2028 Bridgeport Avenue Operating Company II, LLC, d/b/a Golden Hill Health Care Center	1,063

710 Long Ridge Road Operating Company II, LLC, d/b/a Stamford Health Care Center	62,049
240 Church Street Operating Company II, LLC, d/b/a Newington Health Care Center	62,049
River Glen Health Care Center 162 South Britain Road Operating Company II, LLC, d/b/a River Glen Health Care Center	1,063
745 Highland Avenue Operating Company, LLC, d/b/a The Highlands Health Care Center	1,063
245 Orange Avenue Operating Company II, LLC, d/b/a West River Health Care Center	62,049
1 Burr Road Operating Company II, LLC, d/b/a Westport Health Care Center	62,049
Additional entities expected to be joined as Plaintiffs <sup>3</sup>	13,899
<b>TOTAL</b>	<b>\$766,974</b>

**b. security personnel costs**

As a direct consequence of Defendants' relentless corporate campaign and other unlawful conduct directed toward Plaintiffs, five of the Plaintiffs have been forced to retain the services of USA Security Services Corp. to guard against further acts of vandalism and sabotage by NEHCEU and its members:

<b>Name of Plaintiff</b>	<b>Security Personnel Costs- 2012-present (in \$US)</b>
107 Osborne Street Operating Company II, LLC, d/b/a Danbury Health Care Center	131,975

<sup>3</sup> These additional entities are: Bergen Care Home Health; BergenCare Personal Touch; Care One at Hanover Township; CareOne at Creskill; CareOne at Ridgewood Avenue; and The Rehabilitation Center at Raritan Bay Medical Center, LLC dba Care One at Raritan Bay Medical Center (including Trinitas LTAC).

710 Long Ridge Road Operating Company II, LLC, d/b/a Stamford Health Care Center	129,162
240 Church Street Operating Company II, LLC, d/b/a Newington Health Care Center	129,162
245 Orange Avenue Operating Company II, LLC, d/b/a West River Health Care Center	133,340
245 Orange Avenue Operating Company II, LLC, d/b/a West River Health Care Center	28,271
341 Jordan Lane Operating Company II, LLC, d/b/a Wethersfield Health Care Center	44,240
<b>Total</b>	<b>\$596,150</b>

#### **5. reputational harm/loss in brand value**

All of the named Plaintiffs in this lawsuit have sustained substantial reputational damages and a diminution in the value of Plaintiffs' brand as a direct consequence of Defendants' relentless corporate campaign and other unlawful conduct directed toward Plaintiffs. The precise dollar amounts of these reputational damages and damages to Plaintiffs' brand value have yet to be quantified and their computation is expected to be based, at least in part, upon expert analysis and testimony.

#### **6. damages relating to bankruptcy proceedings**

At least in part as the result of Defendants' relentless corporate campaign and other unlawful conduct directed toward Plaintiffs, five of the Plaintiffs were forced into bankruptcy. In re 710 Long Ridge Rd. Operating Co., II, LLC, et al., No. 13-13653-DHS (Bankr. D.N.J. filed Feb. 24, 2013). These five Plaintiffs are: 107 Osborne Street Operating Company, II, LLC, d/b/a Danbury HCC; 710 Long Ridge Road Operating Company II, LLC d/b/a Long Ridge of Stamford; 240 Church Street Operating Company II, LLC d/b/a Newington Health Care Center;

1 Burr Road Operating Company II LLC d/b/a Westport Healthcare Center; and 245 Orange Avenue Operating Company II, LLC, d/b/a West River Health Care Center (collectively, the “Center”). As a consequence of the bankruptcy filing, all of the Plaintiffs suffered significant reputational damages and damages to the value of Plaintiffs’ brand. The precise dollar amounts of these damages have yet to be quantified and their computation is expected to be based, at least in part, upon expert analysis and testimony.

In addition to the foregoing damages, as a consequence of the bankruptcy filing, many of the Plaintiffs were forced to sustain numerous other categories of damages, including, but not limited to, expenditures related to the bankruptcy, professional fees, attorneys’ fees, costs, and other categories of damages set forth more fully in filings with the United States Bankruptcy Court for the District of New Jersey.

Non-privileged documents upon which the foregoing computations of damages are based will be made available for inspection and copying under Fed. R. Civ. P. 34.

Plaintiffs reserve the right to revise, amend, and/or supplement the foregoing supplemental disclosures, including the categories of damages claimed, and Plaintiffs’ computations of specific items of damages claimed, as fact and expert discovery progress. In particular, a number of the foregoing categories of damages and computations of specific items of damages will be subject to expert analysis and testimony, and Plaintiffs specifically reserve the right to revise, amend, and/or supplement the foregoing supplemental disclosures as may be appropriate as the result of expert testimony.

**K&L GATES LLP**

Attorneys for Plaintiffs

Care One Management, LLC, et al

By: /s/ Rosemary Alito  
Rosemary Alito

Dated: May 15, 2014